

LETTER OPINION
2001-L-13

April 6, 2001

Honorable Pam Guleson
Assistant Minority Leader
House Chambers
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Guleson:

Thank you for your letter inquiring about the potential impact of H.B. 1435, 2001 N.D. Leg., on the Commission on the Status of Women (Commission).

You attached a copy of the first engrossment of H.B. 1435 with Senate amendments, but mentioned the engrossed version as it came from the House. The only distinguishing feature between those two versions is the addition by the Senate of a subdivision to subsection 2 of the bill that provides an exemption for programs and policies to encourage diversity and provide opportunities to disadvantaged and diverse students at public and nonpublic institutions of higher education. Section 1(2)(d).

The specific prohibitions provided by H.B. 1435 are contained in the first sentence of subsection 1 of the bill, as follows:

The state may not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

The Commission is provided for in N.D.C.C. § 54-34.3-10. The functions of the Commission are described in that section as:

The commission shall coordinate activities and serve as a clearinghouse and an advisory group to the department [of economic development and finance] for information relating to economic development programs that focus on career development for women. The commission shall prepare for and perform followup duties in connection with state, regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the economic and career development of women.

LETTER OPINION 2001-L-13

April 6, 2001

Page 2

The prohibitory portions of H.B. 1435 relate to the "operation of" public employment, education, and contracting. Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears. N.D.C.C. §1-02-02. The "operation" of those functions means to conduct the affairs of or to manage the activities of public employment, education, or contracting. The American Heritage Dictionary 871 (2d coll. ed. 1991).

The duties of the Commission are to coordinate activities, serve as a clearinghouse, advise the Department of Economic Development and Finance, perform followup duties concerning conferences, to encourage interest, participation, and cooperation with state agencies and organizations in developing services and opportunities, and to provide consultant help to local organizations for women's economic and career development.

The provisions of H.B. 1435 are not expressed in terms that seek to override activities specifically required or authorized by other statutes. The bill only seeks to control how the three areas of administration subject to it are conducted and managed. The statutorily provided duties of the Commission do not inherently involve the conduct or management of public employment, education, or contracting, so H.B. 1435 would not affect the basic functions of the Commission. It is conceivable, though not stated in the statute, that the Commission may have to enter into contracts, including employment contracts, to fulfill some of its duties. If so, the conduct of its contracting activities would have to be nondiscriminatory and nonpreferential as required by H.B. 1435 if it becomes law.

It is therefore my opinion that H.B. 1435, in either of the versions you note in your letter, will not have an effect on the basic duties of the Commission as currently provided in N.D.C.C. § 54-34.3-10. However, to the extent the conduct and management of the functions of the Commission could involve entering into contracts, the management of any contracting activities would be subject to H.B. 1435 if it becomes law.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg